

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 14885US01)

In the Application of:)	
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Kevin T. Chan)	Electronically filed:
)	
Serial No. 10/612,025)	September 4, 2007
)	
Filed: July 2, 2003)	
)	
For: METHOD AND SYSTEM FOR)	
SECURE AUTOMATIC MEDIA)	
DEPENDENT INTERFACE)	
RECONFIGURATION AND REPAIR)	
)	
Examiner: Mon Cheri S. Davenport)	
)	
Group Art Unit: 2609)	
)	
Confirmation No. 5831)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper responds to the Advisory Action mailed August 16, 2007 ("Advisory Action") in the above-identified application. The Applicant respectfully requests review of the final rejection in the above-identified application, in consideration of the following remarks. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS / ARGUMENTS

Claims 1-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,923,663, issued to Bontemps et al. (hereinafter, Bontemps). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 102

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(b), the Applicant maintains that Bontemps does not disclose or suggest at least the limitation of "determining any one usable media pair from all existing media pairs", as recited by the Applicant in independent claim 1. The Advisory Action does not address the Applicant's argument made in his response on the above claim limitation in the Office Action of February 26, 2007 with respect to multiple interpretations of a single citation from Bontemps. The Applicant respectfully resubmits the previous arguments in rephrased language in order to further clarify the arguments previously made.

The Final Office Action on page 10 cites Bontemps FIG. 2 and col. 3, lines 58-62 to reject the above claim limitation:

"A control circuit is provided that toggles (determines) the selected circuit between the first and second states (media pair) until a link detect signal indicates the reception of communication signals (from all existing media pairs). The control circuit holds the select circuit in the particular state in which valid communication signals were detected (determination of the one usable media pair)." -- *Text in parentheses as added by examiner in the Final Office Action.*

However, the above does not teach or suggest at least that "first and second states" are media pairs. There seems to be no support for this interpretation in FIG. 2 either. Hence, the above interpretation of Bontemps, col. 3, lines 58-62 seems to be without basis.

The Final Office Action further states, in regard to the above claim limitation: "In response to the argument that the each PHY device 218 in FIG. 2 of Bontemps is connected to one RX/TX pair, it is noted that the PHY 218 device has more than one port (PORT 1-N) and the media pairs are shown in the figure".

The Applicant points out that this statement is factually erroneous. It can be

seen from FIG. 2 that each PHY 218 device is connected to only one RX/TX pair (220a/b). Each RX/TX pair 220a/b is associated with one port only, as can be seen from FIG. 2 from the fact that each PHY 218 is connected (via the RX/TX pair 220a/b) to one element 202, corresponding to precisely 1 port. The Elements 202 are individually labeled to this effect and Bontemps, col. 7, lines 33-35 states: "The ports 202 are individually labeled PORT1, PORT2, ... , PORTN, where "N" is any desired integer for any number of ports 202." Hence, the Applicant asserts that, despite the Examiner's statement, each PHY 218 is connected to one port only and hence a selection of ports cannot take place in a PHY 218 device, as asserted above.

This view is furthermore supported by Bontemps in col. 9, line 6-8 where it is stated that "Each PHY device 218 is **coupled to a corresponding media-access control (MAC) device (not shown)** for implementing the MAC data link sub-layer" and col. 10, line 54-56 "If communication signals are detected, then the PHY device 218 asserts a **corresponding LINK_DETECT1 signal high indicating detection of a compliant device.**" Hence, both signal connections to a PHY device 218 in FIG. 2 of Bontemps are unrelated to "**determining** any one **usable** media from **all** existing media pairs". Accordingly, the Applicant respectfully submits that the rejection of claim 1 based on 35 U.S.C. § 102(b) be withdrawn and claim 1 be allowed.

The Applicant further maintains that the following claim limitations are not anticipated by Bontemps:

" selecting any one channel from all existing channels, said selected any one channel being different from a general channel assignment corresponding to said determined any one usable media pair; and

assigning said selected any one channel to said any one media pair."

The Advisory Action and the Final Office Action address the Applicant's arguments with respect to the above two claim limitations, citing Bontemps, col. 3, lines 58-68, cited above. The Applicant also notes that the Final Office Action and the Advisory Action rely on Bontemps, col. 3, lines 58-62 recited above to reject **each** of the applicants 3 different claim limitations, apparently interpreting the same two sentences differently for each limitation, which is clearly unreasonable.

On page 10 of the Final Office Action mailed June 4, 2007, marked in parentheses in the above citation, the Examiner highlights how he believes the different passages from Bontemps, col.3, lines 58-61 correspond to the Applicant's claim limitation "determining any one useable media pair from all existing pairs", see above. By looking at the argument made in the Final Office Action, it appears

that **all the elements** of the citation are used to show anticipation of the Applicant's claim limitation.

The Advisory Action, however, then goes on to use the same citation to show supposed anticipation of "selecting any one channel from all existing channels", notwithstanding the fact that there is no mention of, for example, 'channel' in the citation. Importantly, the Advisory Action fails to point out which elements in the above citation may correspond to which elements of the Applicant's claim limitation.

In addition, the Advisory Action also uses the same citation again to also show supposed anticipation of the Applicant's claim limitation "assigning said selected any one channel to said any one media pair." Again, the Advisory action however fails to point out which elements in the citation may correspond to which elements of the Applicant's claim limitation.

Given the markedly different content of the Applicant's 3 claim limitations, it seems a logical contradiction that Bontemps, col. 3, lines 58-62 is needed in its entirety (as quoted from the Advisory Action above) to supposedly anticipate the Applicant's first claim limitation, while the very same passage is also supposed to anticipate a further two, very different, claim limitations by the Applicant.

The Applicant is led to the conclusion that Bontemps, col. 3, lines 58-62, recited in the Final Office Action, does not anticipate the first claim limitation and/or the second and third claim limitation. In either case, the cited passage by Bontemps fails to anticipate each and every element of claim 1, as required by MPEP §2131 and cited above, since **the passage cannot reasonably be interpreted differently for each different claim limitation.**

The Advisory Action offers some further explanation with reference to Bontemps FIG. 2 and col. 7, lines 19-37 and col. 3, lines 44-65. The Office Action, however, does not point out how the additional comments apply to the Applicant's claim limitations. Given the vague nature of the additional comments in the Advisory Action, the Applicant fails to see how these comments may relate directly to the recited claim limitations. Notwithstanding the Applicant's doubt as to the applicability of the further explanations provided, the Applicant notes that the cited passages do not support at least the statement "the working communication channel is selected from all existing channels".

The Applicant respectfully asserts that Bontemps does not disclose any of the Applicant's claim limitations recited above. Hence, the Applicant respectfully submits that the rejection of claim 1 based on 35 U.S.C. §102(b) be withdrawn and claim 1 made allowable.

Independent claims 11 and 21 are similar in many respects to the method

disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Actions at least for the reasons stated above and previously set forth during prosecution with regard to claim 1. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 11 and 21.

B. Rejection of Dependent Claims 2-10, 12-20, 22-30

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 102(b) as being anticipated by Bontemps has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20 and 22-30 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-30.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-30 are in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: September 4, 2007

Respectfully submitted,

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